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ABSTRACT

This digest presents a reprint of an article which addresses the issue of the rights of computer software owners to duplicate materials. A conservative approach to software copyright is taken which looks to how the law will likely be interpreted, rather than waiting for the definitive decision by a court. Three major issues involved with software duplication are discussed: back-up copies, multiple loading or booting from one disk onto multiple machines at the same time, and networks. It is concluded that: (1) although back-up copies (number uncertain) are allowed for use on a second machine in the event the original fails, the copy is not to be used on a second machine at the same time as the original; (2) in the absence of a license that explicitly permits loading multiple computers with the contents from one disk for use at the same time, users would likely be in violation of the copyright law if they did so; and (3) in the absence of a network license, users would likely be in violation of copyright laws if they downloaded a program to multiple stations at the same time from their network. A 13-item reading list completes the digest. (JB)

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ERIC DIGEST

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SOFTWARE COPYRIGHT INTERPRETATION*

By LeRoy Finkel

I have been asked to reconvene the ICCE Software Policy Committee so that we may examine the current state of the art (things in law tend to change over time) and review our current policies. As we prepare to meet it, it seems appropriate to share with *The Computing Teacher* readers the best information we have regarding current interpretation of copyright laws.

There are no definitive answers to most of the questions we have, since the copyright law is vague in places and there have been no court cases to set precedent. Nevertheless, copyright attorneys, court watchers and lawmakers all seem to agree on how a court would interpret the current law if and when a case came before it. Not wanting to get sued and wanting to encourage software development by vendors, I prefer to take a conservative approach that looks to how the law will *likely* be interpreted, rather than waiting for the definitive decision by a court. In other words, I don't want to be the test case!! Do *you*? For those who doubt that publishers will sue a school district or teacher, be reminded that the American Association of Publishers did sue New York University, that a BOCES in New York was also sued (both public agencies lost their cases), and that while publishers may not sue, their professional associations seem willing and able to do so.

The issues:

1. **Back-up copies.** You are allowed back-up copies (number uncertain) that are to be used for archival purposes in the event your original copy fails. Such copies are *not* to be used on a second machine at the same time as the original. Since a backup is allowed by law, and if your vendor does not provide one or allow a process by which you can acquire one, then you may make one. But its *use* is restricted as stated above. Vendors who offer "multiple" back-up copies are using the term the "back-up" incorrectly and have been asked to use the term "multi-copy discounts," which more accurately reflects what they are offering you.

2. **Multiple-loading or booting from one disk into multiple machines at the same time.** "In the absence of a license that explicitly permits you to do so," you would likely be in violation of the copyright laws if you loaded multiple computers with the contents from one disk for use at the same time. The legal concept has to do with the "proliferation of simultaneous users." The law is designed to protect the copyright holder from loss of sales. If *Bank Street Writer* is sold for use on one machine (and it is), and you load it into 15 machines, one after the other, so that all 15 are in use at the same time, you are inhibiting sales. Thus, you are in violation of the law. The fact that you *can* physically load the contents into multiple machines is irrelevant. The law does imply that sequential use on different machines is okay (first on one machine, turn it off, then on another machine). The key element here is proliferation of "simultaneous" users. That one concept has helped me out a lot. Two companies have recently announced simultaneous-use or multiple-loading software. They have been asked to emphasize that this is a special license for a particular piece of software. One solution to the multiple-loading "problem" is multi-copy pricing and licensing, an option more companies seem to be taking.

3. **Networks.** "In the absence of a network license" you would likely be in violation of copyright laws if you downloaded a program to multiple stations at the same time from your network, be it a hard disk or floppy disk network. The "proliferation of simultaneous users" concept described above would again apply. *Whether it is physically possible to load the stations from the network is not germane to this discussion. The absence of a license permitting simultaneous use is the copyright issue.*

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It is not enough for districts to merely pass copyright policies—we must pay heed to them. It is the responsibility of each of us to be a role model to fellow teachers and students alike and allow only legal uses of software on our campuses.

If you have questions, comments or information for the committee, please write me. Since the law is somewhat different in each country, I would like to hear from people willing to serve on subcommittees for specific countries.

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Reading List

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Compiled by Pamela McLaughlin

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